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EXAMINER

MADSEN, ROBERT A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/933,291
Filing Date: August 20, 2001
Appellant(s): KINARD ET AL.

Robert B. Hurley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 20, 2005 appealing from the
Office action mailed May 10, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claim 12 is objected to because of the following informalities: It depends from cancelled claim 11.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

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The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

US 6,221,411 B1	SANFILIPPO et al.	4-2001
WO 97/30909	DARNETT	8-1997
GB 2,296,905	WILES	7-1996
US 4,321,1997	MILLER et al.	3-1982
US 5,135,787	BAIR	8-1992
US 4,743,244	LEKHAC	5-1988

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,6-10,14-18,21,22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanfilippo et al. (US 6221411 B1) in view of Darnett (WO 9730909).

Regarding claims 1,6-10,14-18,21,22, Sanfilippo et al. teach a meat product, an absorbent pad, a tray, and a lid member over the product and tray sealed under less than 1% oxygen atmosphere as recited in claims 1, 6,21,22, (Abstract, Column 3, lines 20-45, Column 5, line 38 to Column 6, line 25).

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Sanfilippo et al. further teach vacuum packaging, as recited in claims 1,7, and 22, may be used (Column 5, lines 55-62). Sanfilippo et al. also teach it is known to use foam trays as recited in claim 18 (Column 1, lines 14-20) Sanfilippo et al. are silent in teaching a particular structure of the soaker pad as recited in claims 1, 8-10,14-17,21

Darnett teaches absorbent pads or soaker pads for meat packages that offer two main advantages over the prior art pads: absorbing the meat juice even when the meat tray is presented at an angle and preventing the extruding of super absorbent gel from the pad (Page 1, line 8 to Page 2, line 7, Page 10, lines 15-28). Darnett teaches the pad comprises an upper web comprises a flexible film such as nylon, or polyamide as recited in claims 8 and 9, which preferably includes microperforations but may be water impermeable as recited in claim 10, an absorbent including a paper layer and super absorbent in granular form as recited in claims 14 and 15, and a lower non-woven fiber web having a hydrophilic composition thereon (i.e. viscose) that draws liquid into the pad as recited in claims 1 and 21 wherein the upper and lower webs are either heat sealed or adhesively sealed as recited in claims 16 and 17 (Page 4, line 18 to Page 5, line 22, Page 6, line 29 to Page 7, line 15, Page 8, lines 11-18, Page 11, lines 29-34). Therefore, it would have been obvious to modify Sanfilippo et al. and include the absorbent pad of Darnett, which comprises an upper web comprises a flexible film such as nylon, or polyamide as recited in claims 8 and 9, which preferably includes microperforations but may be water impermeable as recited in claim 10, an absorbent including a super absorbent in granular form as

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recited in claims 14 and 15, and a lower non-woven fiber layer having a hydrophilic composition thereon (i.e. viscose) as recited in claims 1 and 21, wherein the upper and lower webs are either heat sealed or adhesively sealed as recited in claims 16 and 17, since Darnett teaches this pad is better than the prior art pads because it is able to sufficiently absorb an meat juice, even when the tray is presented at an angle and prevents the extruding of the super absorbent from the pad.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sanfilippo et al. (US 6221411 B1) in view of Darnett (WO 9730909) as applied to claims 1,6-10,14-18,21,22, above, further in view of Wiles (GB 2296905 A).

Sanfilippo et al. teach a modified atmosphere of carbon dioxide that has a shelf life of 14 days and a display life (i.e. red in color) for 3 days (Column 3, lines 20-45),but is silent in teaching a modified atmosphere of 60-80% oxygen as recited in claim 18. Wiles teaches an improvement over the type of dual lid packaging (i.e. comprising an oxygen permeable layer under an oxygen impermeable layer) of Sanfilippo et al. in that fresh cuts of meats can be stored for about 9 days while the meat remains red in color by providing a 60-80% oxygen mixture in a single lid configuration. Wiles also teaches the type of gas selected depends on the type of meat stored in the package(Abstract, Page 4, lines 1-5, Page 1, line 13 to Page 2, line 17, Page 7, lines 4-15, Page 9, lines 20-26). Therefore, it would have been obvious to select a 60-80% oxygen atmosphere since Wiles teaches this type of atmosphere used for red meats this

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would (1) eliminate the need for two lid layers for red meat packaging and (2) provide an extended "red in color" shelf life for red meats.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sanfilippo et al. (US 6221411 B1) in view of Darnett (WO 9730909) as applied to claims 1,6-10,14-18,21,22, above, further in view of Miller et al. (US 4321997)

Modified Sanfilippo et al. is silent in teaching the absorbing layer includes both wood fluff and a layer of tissue paper. Miller also teaches an absorbent pad in combination with a meat tray and teaches it is conventionally known to use wood fluff as the absorbent layer and advantageous to combine it with a tissue layer to prevent wood fluff dust from exiting openings in the pad and contaminating the pad (Abstract, Column 3, line 50 to Column 4, line 20). Therefore, it would have been obvious to include an absorbent layer with both wood fluff and tissue paper since Miller teaches wood fluff is a known absorber and is preferably combined with tissue paper to prevent wood fluff dust from exiting the pad and contaminating the food.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanfilippo et al. (US 6221411 B1) in view of Darnett (WO 9730909) as applied to claims 1,6-9,14-18,21,22, above, further in view of Bair (US 5135787) and LeKhac (US 4743244).

Modified Sanfilippo et al. teach hydrophobic fibers treated with hydrophilic compositions such as viscose that draw liquid into the pad, but are silent in

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teaching a hydrophilic composition comprising polysorbate, ethoxylated linear alcohol, fatty amine oxide, alkanolamide, and block copolymers of ethylene oxide or propylene oxide with dimethylsiloxamine that are coupled to polar groups.

Bair also teaches an absorbent pad for a meat package wherein the outer web comprises non-woven polyester fibers with a wetting agent to impart hydrophilic character which include cationic, anionic, nonionic or amphoteric surfactants such that the outer layers expand to contain the super absorbent and better distribute the fluid over the pad to overcome any possible clogging of the pores in the outer web, as well as facilitate sealing (Abstract, Column 1, line 49 to Column 2, line 6, Column 4, lines 45 –Column 5, line 2). Blair includes 0.4% of such a wetting agent (Example).

LeKhac teaches enhancing the absorbing characteristics of polymers, which may be used in meat trays by adding a non-ionic surfactant, such as block copolymers of ethylene oxides, including poly (oxyethylene) as recited in claim 19 (Column 5, lines 45 –54, Column 6, lines 23-62). Therefore, it would have been obvious to select any cationic, anionic, nonionic, or amphoteric surfactant, such as nonionic block co-polymers of ethylene oxides, including poly (oxyethylene), for imparting a hydrophilic character to the non-woven polyester-based lower web of Sanfilippo et al. since this would avoid the problem of clogging of the pores that absorb the liquid by allowing the lower web to expand to contain and better distribute the fluid over the pad, in addition to provide a good sealing. It

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would have been further obvious to select between 0.1 to 10% since Blair teaches 0.4% is sufficient.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanfilippo et al. (US 6221411 B1) in view of Darnett (WO 9730909).

Sanfilippo et al. teach placing both a meat product and an absorbent pad on a tray, placing a lid member over the product and tray, and evacuating the atmosphere from the product and support member as recited in claim 23, wherein a combination of both vacuum and modified atmosphere may be alternatively supplied, which would include supplying a modified atmosphere after evacuation before sealing as recited in claim 24 (Abstract, Column 3, lines 20-45, Column 5, line 38 to Column 6, line 25). Sanfilippo et al. is silent in teaching the particular structure of the absorbent pad.

Darnett teaches absorbent pads or soaker pads for meat packages that offer two main advantages over the prior art pads: absorbing the meat juice even when the meat tray is presented at an angle and preventing the extruding of super absorbent gel from the pad (Page 1, line 8 to Page 2, line 7, Page 10, lines 15-28). Darnett teaches the pad comprises an upper web comprising a flexible film, an absorbent, and a lower non-woven fiber layer having a hydrophilic composition thereon (i.e. viscose) as recited in claim 23 wherein the upper and lower webs are either heat sealed or adhesively sealed together (Page 4, line 18 to Page 5, line 22, Page 6, line 29 to Page 7, line 15, Page 8, lines 11-18, Page

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11, lines 29-34). Therefore, it would have been obvious to modify Sanfilippo et al. and include the absorbent pad of Darnett, which comprises an upper web comprising a flexible film, an absorbent, and a lower non-woven fiber layer having a hydrophilic composition thereon (i.e. viscose wherein the upper and lower webs are either heat sealed or adhesively sealed together as recited in claim, since Darnett teaches this pad is better than the prior art pads because it is able to sufficiently absorb a meat juice, even when the tray is presented at an angle and prevents the extruding of the super absorbent from the pad.

(10) Response to Argument

Regarding the rejection of claims 1,6-10,14-18,21 and 22, Appellants contend that the Examiner has failed to set forth a prima facie case of obviousness.

Appellants contend that DARNETT does not teach a liquid permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member select from the group consisting of polyolefin, polyamide, and polyester, and for this reason SANFILIPPO et al. modified by DARNETT does not meet the limitations of the claims to set forth a prima facie case of obviousness.

DARNETT teaches a lower non-woven fiber layer having a hydrophilic composition thereon (i.e. viscose). Appellants attention was directed to Page 11, lines 29-34 in the Office Action where DARNETT teaches the sheets used for the pad comprise a blend of cellulose fibers and thermoplastic fibers with one example including a bottom sheet made from a polyester fiber and viscose fiber

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blend. As indicated in the rejection, the viscose portion was understood to be the hydrophilic composition. The fibers, blended together, would meet the limitation of a nonwoven fiber (e.g. polyester fibers) with a hydrophilic composition (viscose fibers) thereon, since a mixture would result in viscose fibers being "on" the polyester fibers. This is made even more evident by the fact that in another example provided by DARNETT on Page 11, line 29-Page 12, line 10 the bottom sheet includes 78% cellulose fibers and 22% plastic fibers. At such a ratio one would expect the cellulose fibers to be "on" the plastic fibers. Thus, a prima facie case of obviousness was presented in the Office action.

Appellants further contend that DARNETT does not teach coating on the fiber of the lower web. The term "coating" is not recited in the rejected claim(s). The recitation is "a nonwoven fiber having a hydrophilic composition *thereon*", and it does not require the hydrophilic composition to be a "coating" Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the rejection of claim 5 and 13, Appellants contend that since the Examiner failed to establish a prima facie case of obviousness relative to Claim 1, from which Claims 5 and 13 depend, the Examiner has failed to set for a prima facie case of obviousness of Claims 5 and 13. The issue of a prima facie case of obviousness relative to Claim 1 was addressed in the two preceding paragraphs.

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Regarding claims 19 and 20, Appellants contend that the Examiner failed to establish a prima facie case of obviousness relative to Claim 1, from which Claims 19 and 20 depend. As stated previously a prima facie case of obviousness was established relative to the rejection of the claims as being unpatentable over SANFILIPPO et al. in view of DARNETT.

Appellant further contend that because DARNETT teaches the sheet "instantly wets out" and 78% cellulose fibers, DARNETT provides enough hydrophilicity, and one would not look to BAIR to modify the hydrophilicity DARNETT. BAIR teaches mixing non-woven polyester fibers with 0.4% wetting agent to impart hydrophilic character which include cationic, anionic, nonionic or amphoteric surfactants such that the outer web fiber-based web expands to contain the super absorbent and better distribute the fluid over the pad to overcome any possible clogging of the pores in the outer web, as well as facilitate sealing. The lower sheet of DARNETT is nonwoven fibers(e.g. polyester fibers) blended with a hydrophilic composition (viscose fibers) . The Examiner stated that the motivation to combine the teaching of BAIR with modified SANFILLIPO et al. , or the pad of DARNETT, is one can avoid the problem of clogging of the pores that absorb the liquid by allowing the lower web to expand to contain and better distribute the fluid over the pad, in addition to provide a good sealing.

With respect to the wetting agents of BAIR allowing the polyester to "expand to contain the super absorbent", Appellants contend that DARNETT by teaching "wets out instantaneously" of Page 11, line 38 would undoubtedly

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perform in the same manner as BAIR. However, this action of expansion is not disclosed by BAIR. Furthermore, one would expect mixture of 78% cellulose and 22% polyester fiber would be less expandable to contain the super absorbent than a non woven polyester fiber mixed 0.4% surfactant, since one would expect the sheet comprising substantially all polyester would be more flexible and readily expandable than a sheet comprising 78% cellulose.

With respect to the wetting agents of BAIR better distributing the fluid over the pad to overcome clogging, Appellants contend that the clogging of the pores is not solved by the wetting agents but by the distribution of absorbent material. However, BAIR teaches the particular sheet composition allows for wicking and distribution of the fluid through the pad (Column 4, lines 60-62). Since clogging results from the maldistribution of absorbent material, or wetting of only a portion of absorbent material, providing a good distribution of fluid throughout the absorbent would prevent such a concentration of liquid in only a particular location.

With respect to "facilitating sealing", Appellants contend that this is not a function of the wetting agent. However, BAIR teaches a preferred sheet is non-woven polyester fiber with 0.4% of a wetting agent to provide a good seal. DARNETT teaches a cellulose and polyester fiber, wherein polyester may be only 22% of the composition.

With respect to LEKHAC, LEKHAC is relied for teaching a particular non-ionic surfactant, such as block co-polymers of ethylene oxides, including poly(oxyethylene), suitable for absorbent pads. Appellant contends LEKHAC does

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not teach poly (oxyethylene) is not non-ionic surfactant. However, LEKHAC does teach the poly(ethylene oxides) are non-ionic surfactants, by teaching the example of a commercially available POLYOX ® (Column 5, lines 55-60), which is a known non-ionic block co-polymer of ethylene oxides surfactant. Appellant further contents that the claim requires a block copolymer of ethylene oxide must be coupled with polar groups containing a hydrophilic moiety. However, based on the claim limitation, it is not clear that the "that are coupled to polar groups containing a hydrophilic moiety" is referring back to the ethylene oxide co-polymers. Thus, LEKHAC meets the recited limitation.

Regarding claims 23 and 24, Appellants contend that the Examiner has failed to set forth a prima facie case of obviousness. Appellants contend that DARNETT does not teach a liquid permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member select from the group consisting of polyolefin, polyamide, and polyester, and for this reason SANFILIPPO et al. modified by DARNETT does not meet the limitations of the claims to set forth a prima facie case of obviousness.

As set forth in the rejection, DARNETT teaches a lower non-woven fiber layer having a hydrophilic composition thereon (i.e. viscose). Appellants attention was directed to Page 11, lines 29-34 in the Office Action where DARNETT teaches the sheets used for the pad comprise a blend of cellulose fibers and thermoplastic fibers with one example including a bottom sheet made from a polyester fiber and viscose fiber blend. As indicated in the rejection, the viscose

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portion was understood to be the hydrophilic composition. The fibers, blended together, would meet the limitation of a nonwoven fiber (e.g. polyester fibers) with a hydrophilic composition (viscose fibers) thereon, since a mixture would result in viscose fibers being "on" the polyester fibers. This is made even more evident by the fact that in another example provided by DARNETT on Page 11, line 29- Page 12, line 10 the bottom sheet includes 78% cellulose fibers and 22% plastic fibers. At such a ratio one would expect the cellulose fibers to be "on" the plastic fibers.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



RAM

April 1, 2005

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